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By Email and First Class Mail

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Re: Westbank Asbestos Site, Jefferson Parish, Louisiana

Dear Counsel:

The purpose of this letter is to respond, on behalf of Johns Manville (JM), to your letter of July 10, 2006, concerning the settlement of the Government's claims against JM at the Westbank Asbestos Site in Jefferson Parish, Louisiana (Site). This letter constitutes a confidential settlement communication pursuant to Rule 408 of the Federal Rules of Evidence, and therefore nothing in it shall be admissible for any purpose. This letter is not intended to constitute an Initial Notification under the terms of the Global Settlement Order (GSO) entered in Manville Corp. v. United States, No. 91 Civ. 66832 (RWS)(S.D.N.Y., October 28, 1994).

We appreciate the Government's attempts to compromise the matter, and basically agree with the Government's belief that it serves the interests of the parties to resolve this dispute without resort to the Manville Only Non Binding Allocation of Responsibility (MONBAR) process, assuming that is possible. While JM notes the Government's willingness to offer a further compromise of its claim, JM cannot accept the Government's counter-offer for the reasons detailed below. While JM is offering its own compromise in this letter, JM believes that we are approaching the point where we must consider the possibility that we will not be able to reach agreement, necessitating a more formal process. Therefore, in addition to the compromise set forth below, JM is including its preliminary thoughts on the minimum necessary procedures for determining the Manville Share should it be necessary to initiate the MONBAR process contemplated by the GSO.

In the July 10, 2006 letter, the Government agreed, for purposes of settlement negotiation, to allocate liability among the three classes of CERCLA Section 107(a) liable parties present at the Site: generators; landowners; and, transporters. In its March 16, 2006 letter to the Government, JM had contended, for purposes of settlement, that an allocation of 34% for the "known" generator (JM) (multiplied by 80% to reflect the filler that USEPA noted was added to the material by a third party), 33% for the transporters, and 33% for the owners was appropriate. The Government argued for a larger share for JM, based on the factors in CERCLA Section 122(c)(3), and included an analysis of those factors. The Government concluded that the appropriate share for the transporters and owners "should be allocated collectively no more than a 40% share of the liability and arguably much less," leaving a proposed generator share for JM of at least 60%.

Implicit in the Government's analysis of share at this Site is its assumption that JM is jointly and severally liable for the Government's costs at the Site. JM has previously set forth its arguments concerning the inapplicability of concepts of joint and several liability in this matter, and little purpose would be served by reiterating them, in toto, in this letter. However, it does bear repeating that, when the Government desired joint and several liability, the Government negotiated for it in global settlement orders – just as the Government did for one of JM's principal competitors, Owens Corning. In Re Owens Corning, Case No. 00-03837, U.S. Bankruptcy Court, District of Delaware, 2003 EPA Consent LEXIS 191 (May 20, 2003), par. 8.

Manville Share Factors

The Government's analysis of Manville Share factors contains a number of inaccurate statements that are central to resolution of this matter, and with which JM takes significant issue.

Toxicity and Volume

The Government contends that all of the asbestos at the Site came from JM, so JM "is the sole generator for 100% of the sole hazardous substance at issue for the Site." Assuming arguendo that all the asbestos came from JM (and JM remains unconvinced that other local industries, such as US Gypsum and Celotex, did not contribute to some of the locations that were the subject of US EPA's removal activities), JM did not contribute 100% of the *volume* of the material that was ultimately removed or capped in place. The Government has stated in its own documents that third parties (most likely the transporters/sellers) added filler to the material taken from the JM site and possibly also from the landfill where JM material was disposed of; according to US EPA, the purpose of the filler was to make the JM cement pipe material more stable for roadbed purposes. While the Government has withheld much of the cost data for particular sites, it is obvious that the Government's actual response costs were driven by the **volume** of the material removed and capped as much, if not more, than by the material's toxicity. So, contrary to the

Government's assertion, the toxicity and volume factors do **not** solely favor the other classes of potentially liable parties and are in part favorable to JM. These factors actually weigh in favor of assessing a larger percentage contribution to the transporters or other third parties that added the filler material and placed it on the particular properties.

Strength of Evidence

The Government asserts that transporter liability was limited to Rotolo and D'Marco and perhaps other homeowners and other residents, who, the Government asserts, helped themselves to waste, lacking knowledge of the hazard. Since the Government has steadfastly refused to identify the homeowners, residents and other property owners where work was done, it is impossible for JM to determine whether these parties actually lacked knowledge of the hazard. The Government also refused to consider the Parish a transporter because none of the areas where the Parish "has admitted" disposing of asbestos were areas that US EPA cleaned up. The Government provides no information that it did anything other than accept the Parish's admission at face value. JM continues to believe that the Parish had involvement both as a transporter, and, in the cases of servitudes and drainage ditches along properties where removal activities occurred, as a property owner. However, since US EPA has refused to identify properties where work occurred, it has been impossible for JM to investigate the Parish's actual involvement. In fact, JM's FOIA request for the property owners and locations at which US EPA performed its work is still pending. Freedom of Information Act (FOIA) Appeal 06-RIN-00758-02-A

The Government contends that the transporters' share of liability is "much less than JM" because it is not clear who transported all the waste found on residential and commercial properties and which property owners obtained the material "directly from the landfill" without the use of transporters. One thing does seem to be clear. The Government has never alleged, presumably because there is no evidence, that JM had any direct involvement in transporting the asbestos material to any of the residential or commercial properties from which it was ultimately removed or capped in place. The Government also states that the "myriad property owners that unwittingly used hazardous material for fill, and those that subsequently acquired contaminated properties, have strong equitable and legal defenses." But again, the Government has for the past ten years refused to identify the residential properties where removal activities took place, thereby making it impossible for JM to determine whether the property owners "unwittingly" used hazardous material for fill, or whether the properties have subsequently been transferred to new owners.

Ability to Pay

The Government has previously pointed to general demographic information concerning the Westbank area in an attempt to justify its contention that no single property owner is able to pay

a share of the Government's removal costs. The general demographic condition of the area is irrelevant to determining whether any particular property owner bears some responsibility for the asbestos material that was placed upon and subsequently removed from his/her property and is capable of contributing to the removal costs, which in some instances actually enhanced their property values. For over ten years, the Government has also refused to even investigate (or allow JM to investigate) whether homeowner insurance could have been available as a potential source of funds to reimburse the Government. Surely this ten year refusal to even put insurers on notice has resulted in such prejudice as to preclude any coverage now; that prejudice should inure to the Government and not to JM.

This is not a situation where someone placed hazardous materials on the residential properties in the dead of night while the homeowners were asleep. The Government itself notes that, in at least some instances, the homeowners may have obtained the material deposited from the landfill or from JM directly and applied it to their own property. While the Government may choose, for policy reasons, not to pursue homeowners or other property owners, their "fair share" should be considered in determining JM's "fair share."

Finally, the Government also does not address parties such as the Archdiocese of New Orleans, which JM understands to be the owner of the Hope Haven Center where substantial removal activities were conducted. Surely the Archdiocese of New Orleans is financially capable of contributing to the removal costs.

Other Landowner and Homeowner Issues

In addition, different homeowners may have unique facts and circumstances that could support a JM argument for a lower Manville Share. The Government's decade-long delay has no doubt rendered such facts and circumstances largely unavailable. Therefore, JM would ask the MONBAR Consultant to draw inferences against the Government for failure to make available any information, either directly or indirectly, possibly favorable to JM.

The discussion above demonstrates the many problems caused JM by the Government's refusal to identify the property owners at which removal actions were conducted. JM anticipates that the Government's apparent desire to shield the property owners will also create problems, should this case be resolved by MONBAR. JM contends that the Government will need to present substantial evidence concerning each of the properties at which work was done in order to sustain its burden of proof. To the extent that evidence is no longer available, whether due to the death of the original homeowner or otherwise, the Government will not be able to meet its burden. If the evidence is still available, JM is willing to discuss with the Government mechanisms for protecting the privacy of property owners, but believes that, ultimately, it will be necessary for the MONBAR Consultant and JM to have access to much more detailed

information concerning the circumstances under which asbestos material came to be located at particular properties in order for the Manville share to be determined accurately and fairly.

MONBAR Procedure

While the Global Settlement Order describes, in general terms, the MONBAR process, it does not specifically describe how the MONBAR will be conducted. In the interests of minimizing the time and cost associated with litigation, JM does not believe that all the procedural mechanisms provided by the Federal Rules of Civil Procedure are necessary. However, JM does believe that a minimum amount of prehearing discovery would serve to make the MONBAR process more fair and efficient. Specifically, JM contends that there should be an opportunity to depose witnesses and review all documents before the MONBAR is conducted.

Under the GSO JM has reserved its ability to assert all arguments and defenses not related to JM's bankruptcy. GSO Paragraph 68. Therefore, as part of the MONBAR JM would also assert at least all the defenses and arguments set forth in JM's letter to US EPA Region 6 dated July 19, 1999. JM would renew its arguments, set forth in that letter, that US EPA exceeded its removal authority at the Site. JM would also argue that US EPA took numerous actions that were inconsistent with the National Contingency Plan. For example, US EPA's failure to conduct any real engineering evaluation and cost analysis led to excessive and unnecessary response costs. In addition, the On-Scene Coordinator has admitted that some locations were remediated despite being in good condition. Finally, we have pointed out that the totality of factors and actions made US EPA's response action arbitrary and capricious and ineligible for cost recovery.

JM Counter-offer

JM is still somewhat optimistic that it will be possible to avoid going through an adversarial MONBAR process, and toward that end, is making the following proposal. In order to settle this matter and significantly reduce the time, expense and Government resources that would be required in litigation, JM is now offering $5,464,800, subject to the limitations in the GSO, including the $850,000 annual cap for all JM sites nationwide. This offer is calculated as shown below.

JM counter-offer amount =

$27.6 million (site wide response costs) x

45% (fair share attributable to generator parties) x

80 % (JM's fair share of generator party share) x

55 % (as provided for in the Global Settlement Order) = $ 5,464,800

JM will also need as part of the settlement agreement a comprehensive release from further liability with respect to all Westbank sites at which the Government could allege JM has liability. Finally, JM will need reasonable documentation of the work performed by USEPA in order to satisfy JM's internal audit department.

As you may know, the form of settlement that US EPA and JM have used to date is a relatively simple letter agreement that provides for the settlement amount and scope of release. The rest of the settlement terms are provided for by the GSO itself. JM sees no reason to deviate from this practice for the Westbank Site.

JM remains interested in trying to resolve this case without having to resort to the MONBAR, and we hope that we can continue to have productive discussions along these lines. After you have had a chance to review this letter and discuss it with the appropriate authorities, please contact the undersigned if you wish to have further discussions.

Very truly yours,

Edward P. Kenney

Edward P. Kenney

EPK:sd

cc: Bruce D. Ray, JM
Brent Tracy, JM